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Fiscal Note

Drafting Number: LLS 23-0660
Prime Sponsors: Sen. Sullivan; Ginal
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Bill Status: Senate Finance
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Bill Topic: REGULATION OF KRATOM

Summary of Fiscal Impact:

<input checked="" type="checkbox"/> State Revenue	<input checked="" type="checkbox"/> TABOR Refund
<input checked="" type="checkbox"/> State Expenditure	<input type="checkbox"/> Local Government
<input type="checkbox"/> State Transfer	<input type="checkbox"/> Statutory Public Entity

The bill creates a regulatory structure for kratom in the Department of Revenue. It will increase state revenue and expenditures on an ongoing basis.

Appropriation Summary: For FY 2023-24, the bill requires an appropriation of \$239,621 to the Department of Revenue.

Fiscal Note Status: The fiscal note reflects the introduced bill.

Table 1
State Fiscal Impacts Under SB 23-147

		Budget Year FY 2023-24	Out Year FY 2024-25	Out Year FY 2025-26
Revenue	Cash Funds	-	\$720,000	\$732,000
	Total Revenue	-	\$720,000	\$732,000
Expenditures	General Fund	\$239,621	\$313,774	-
	Cash Funds	-	\$313,775	\$627,549
	Centrally Appropriated	\$20,450	\$90,707	\$90,707
	Total Expenditures	\$260,071	\$718,256	\$718,256
Total FTE		1.6 FTE	6.2 FTE	6.2 FTE
Transfers		-	-	-
Other Budget	General Fund Reserve	\$35,943	\$47,066	-
	TABOR Refund	-	\$720,000	\$732,000

Summary of Legislation

The bill creates the Colorado Kratom Consumer Protection Act effective July 1, 2024.

Registration of kratom products. Prior to the sale of any kratom product, the processor must register products with the Department of Revenue (DOR) and pay a per-product registration fee. Upon registration of a product, processors must submit to the DOR a certificate of analysis from a third-party laboratory showing that the kratom product meets standards outlined in the bill. Registration fees are credited to the newly created Kratom Consumer Protection Cash Fund, which is continuously appropriated to DOR.

The DOR must maintain and publish a list of kratom processors, collect sales data from kratom processors, and promulgate rules as necessary for the administration of the registration program. Kratom processors are required to notify the DOR of any adverse event for one of their products, and must comply with any subsequent investigation. The DOR may, if there is a reasonable basis, require a compliance test by a third-party laboratory at the processor's expense.

Enforcement. The DOR is authorized to impose fines on processors that violate the bill. The bill outlines a fine of \$500 for a first offense and \$1,000 for each subsequent offense, and authorizes the DOR to revoke the processor's registration. Fine revenue is credited to the Kratom Consumer Protection Cash Fund.

General prohibitions. The bill prohibits all persons from:

- adulterating a kratom product with a controlled substance;
- selling a kratom product that does not have a label that identifies the manufacturer and full list of product ingredients;
- selling a kratom product to a person under 21; and
- displaying or storing kratom products in a retail location that can be accessed by individuals under 21 years of age.

Background and Assumptions

What is kratom? The bill defines kratom products as any part of the leaf of the plant *mitragyna speciosa*, or a kratom extract, manufactured as a food, powder, capsule, pill, beverage, or any other edible product. Kratom is not controlled under the federal Controlled Substances Act and there are currently no U.S. Food and Drug Administration-approved uses of kratom.

Current kratom prohibitions. Under current law, enacted through Senate Bill 22-120, processors are subject to specific labeling requirements; prohibited from advertising, distributing, selling, or offering for sale kratom products to anyone under 21 years of age; and prohibited from adding any ingredient to a kratom product that is prohibited in the bill.

Kratom feasibility report—Department of Revenue. Pursuant to Senate Bill 22-120, the DOR conducted a [feasibility report](#) on the regulation of kratom processors. The report estimates there are 282 brick-and-mortar kratom retailers in Colorado and between 10 to 15 in-state processors. No information is available on the number of individual products sold in Colorado, through either in-state or out-of-state retailers.

Utah’s regulatory structure. Utah has an established kratom regulatory structure with 27 in-state and out-of-state registered processors and 300 registered products. The fiscal note assumes that Colorado will have a similar number of registered products.

State Revenue

Beginning in FY 2024-25, the bill will increase state revenue from kratom product registration and renewal fees at amounts sufficient to cover the regulatory costs outlined in the State Expenditures section, and may increase revenue from enforcement penalties, credited to the Kratom Consumer Protection Cash Fund. This revenue is subject to TABOR.

Fee impact on kratom processors. Colorado law requires legislative service agency review of measures which create or increase any fee collected by a state agency. These fee amounts are estimates only, actual fees will be set administratively by the DOR based on program costs and the number of registrations subject to the fee. Using Utah’s registered products as a proxy, the fiscal notes assumes 300 kratom products will be registered in the state initially, with a 10 percent growth rate in outyears. Table 2 outlines the fee impact of this bill.

Table 2
Fee Impact on Kratom Processors

Year	Type of Fee	Fee Estimate	Number Affected	Total
FY 24-25	Initial Product Registration	\$2,400	300	\$720,000
FY 2024-25 Total				\$720,000
FY 25-26	Initial Product Registration	\$2,400	30	\$72,000
	Annual Product Renewal	\$2,200	300	\$660,000
FY 2025-26 Total				\$732,000

Penalty impact. To the extent the DOR levies fines on kratom processors, revenue will increase to the cash fund. This impact cannot be estimated.

State Expenditures

The bill increases state expenditures in the Department of Revenue by about \$260,000 in FY 2023-24 and \$720,000 in FY 2024-25 and ongoing. Expenditures are paid from the General Fund in FY 2023-24 and midway through FY 2024-25, then from the Kratom Consumer Protection Cash Fund thereafter, when fee revenue is available to support the regulatory program. Expenditures are shown in Table 2 and detailed below.

Table 3
Expenditures Under SB 23-147

	FY 2023-24	FY 2024-25	FY 2025-26
Department of Revenue			
Personal Services	\$88,945	\$380,369	\$380,369
Operating Expenses	\$2,160	\$6,750	\$6,750
Capital Outlay Costs	\$33,350	-	-
Legal Services	\$95,166	\$235,800	\$235,800
Computer Programming	\$20,000	-	-
Vehicle Lease	-	\$4,630	\$4,630
Centrally Appropriated Costs ¹	\$20,450	\$90,707	\$90,707
FTE – Personal Services	1.1 FTE	5.0 FTE	5.0 FTE
FTE – Legal Services	0.5 FTE	1.2 FTE	1.2 FTE
Total Cost	\$260,071	\$718,256	\$718,256
Total FTE	1.6 FTE	6.2 FTE	6.2 FTE

¹ Centrally appropriated costs are not included in the bill's appropriation.

Department of Revenue. The DOR will establish a cash-funded division to regulate kratom, as outlined below.

- **Staff.** DOR requires staff to perform rulemaking, process product registrations, review certificates of analysis from third-party laboratories, perform investigations, and conduct enforcement activities. It is estimated that 5.0 FTE are required for this work, including 1.0 FTE Administrator, 1.0 FTE Administrative Assistant, 1.0 FTE Legal Assistant, 1.0 FTE Scientist, and 1.0 FTE Compliance Investigator. First-year FTE impacts reflect staggered start dates from January through June, and are prorated for the General Fund pay date shift. Standard operating and capital outlay costs are included for each FTE.
- **Legal services.** Legal services are required to assist with the rulemaking and regulatory process, estimated at 900 hours in the first year and 1,000 hours per year thereafter. Assuming that a registration will be treated the same as a license under the state's Administrative Procedure Act, an estimated 1,230 hours per year are required to represent the DOR in registration revocation hearings, assuming four cases at 120 hours each and 30 smaller cases at 25 hours each.

- **Computer programming.** One-time computer programming costs of \$20,000 are required to update the DOR's licensing software (MyLO).
- **Vehicle lease.** The compliance investigator requires a vehicle to conduct investigations.
- **Other workload.** Existing DOR staff will assist with the initial workload to create a webpage outlining kratom regulations on the DOR website.

Centrally appropriated costs. Pursuant to a Joint Budget Committee policy, certain costs associated with this bill are addressed through the annual budget process and centrally appropriated in the Long Bill or supplemental appropriations bills, rather than in this bill. These costs, which include employee insurance and supplemental employee retirement payments, are shown in Table 3.

Other Budget Impacts

General Fund reserve. Under current law, an amount equal to 15 percent of General Fund appropriations must be set aside in the General Fund statutory reserve. Based on this fiscal note, the bill is expected to increase the amount of General Fund held in reserve by the amounts shown in Table 1, decreasing the amount of General Fund available for other purposes.

TABOR refunds. The bill is expected to increase the amount of state revenue required to be refunded to taxpayers by the amounts shown in the State Revenue section above. This estimate assumes the December 2022 LCS revenue forecast. Because TABOR refunds are paid from the General Fund, increased cash fund revenue will reduce the amount of General Fund available to spend or save.

Technical Note

The bill does not currently allow the Kratom Consumer Protection Cash Fund to cover the DOR's indirect program costs. The fiscal note assumes this will be an allowable use of the fund.

Effective Date

The bill takes effect 90 days following adjournment of the General Assembly sine die, assuming no referendum petition is filed. It applies to conduct occurring on or after July 1, 2024.

State Appropriations

For FY 2023-24, the bill requires a General Fund appropriation of \$239,621 to the Department of Revenue, and 1.1 FTE. Of this amount, \$95,166 is reappropriated to the Department of Law with an additional 0.5 FTE.

State and Local Government Contacts

Information Technology

Law

Revenue